FILE COPY.

Office Supreme Court, U. S.
FILED.
OCT 20 1906
JAMES H. McKENNEY,
CLERK.

No. 167.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, PETITIONER,

v.

GEORGE RIGGS & CO., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES, PETITIONER,
v.
GEORGE RIGGS & CO., RESPONDENTS. } No. 167.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a customs case requiring construction of paragraph 313 of the last tariff act, which applies to figured cotton cloth.

The question involved is of importance to the Government's revenues and of great consequence to domestic manufacturers of a rapidly increasing product, now estimated to be worth fifty million dollars per annum.

The following paragraphs are parts of the cotton schedule, tariff act July 24, 1897 (30 Stat., 175–178):

> 304. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, and

10092—06——1

not exceeding fifty threads to the square inch, counting the warp and filling, one cent per square yard; if bleached, one and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, two cents per square yard.

305. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, exceeding fifty and not exceeding one hundred threads to the square inch, counting the warp and filling, and not exceeding six square yards to the pound, one and one-fourth cents per square yard; exceeding six and not exceeding nine square yards to the pound, one and one-half cents per square yard; exceeding nine square yards to the pound, one and three-fourths cents per square yard; if bleached, and not exceeding six square yards to the pound, one and one-half cents per square yard; exceeding six and not exceeding nine square yards to the pound, one and three-fourths cents per square yard; exceeding nine square yards to the pound, two and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding six square yards to the pound, two and three-fourths cents per square yard; exceeding six and not exceeding nine square yards to the pound, three and one-fourth cents per square yard; exceeding nine square yards to the pound, three and one-half cents per square yard: *Provided*, That on all cotton cloth not exceeding one hundred threads to the square inch, counting the warp and fill-

ing, not bleached, dyed, colored, stained, painted, or printed, valued at over seven cents per square yard, twenty-five per centum ad valorem; bleached, valued at over nine cents per square yard, twenty-five per centum ad valorem; and dyed, colored, stained, painted, or printed, valued at over twelve cents per square yard, there shall be levied, collected, and paid a duty of thirty per centum ad valorem.

306. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourths cents per square yard; if bleached and not exceeding four square yards to the pound, two and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding four square yards to the

pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over nine cents per square yard, thirty per centum ad valorem; bleached, valued at over eleven cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of thirty-five per centum ad valorem.

307. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, and not exceeding three and one-half square yards to the pound, two cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, three cents per square yard; exceeding six square

yards to the pound, three and one-half cents per square yard; if bleached, and not exceeding three and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, three and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four cents per square yard; exceeding six square yards to the pound, four and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding three and one-half square yards to the pound, four and one-fourth cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, four and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four and three-fourths cents per square yard; exceeding six square yards to the pound, five cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over ten cents per square yard, thirty-five per centum ad valorem; bleached, valued at over twelve cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be

levied, collected, and paid a duty of forty per centum ad valorem.

308. [This applies to cotton cloth of 200–300 threads and imposes a minimum specific duty of 3½ cents per square yard and an ad valorem duty of 40 per centum.]

309. [This applies to cotton cloth exceeding 300 threads and imposes a minimum specific duty of 4 cents per square yard and an ad valorem duty of 40 per centum.]

310. The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule, unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or otherwise, whether figured, fancy, or plain, the warp and filling threads of which can be counted by unraveling or other practicable means.

311, 312. [Irrelevant.]

313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

Paragraphs 304, 305, 306, and 307, act 1897, are identical with paragraphs 252, 253, 254, and 255, tariff act 1894.

Paragraph 308, act 1897, takes the place of paragraph 256, act 1894. It, however, applies only to cloth of 200–300 threads, instead of wherever they exceed 200; and it increased the minimum specific duty from 3 to 3½ cents per square yard and the ad valorem from 35 to 40 per centum.

Paragraph 309, act 1897, has no corresponding one in the earlier act, and it imposes specific and ad valorem rates materially higher.

Nothing in the act of 1894 corresponds to paragraph 313, act 1897.

The imports—four items—were cotton cloth in which other than ordinary warp and filling threads had been introduced in weaving to form a figure. The number of threads, condition, and value are shown in the following table:

Item.	Case.	Count of threads.	Condition.	Value per square yard.
1561	2204	100–150	Colored	14½ cents or over 12½ cents.
1431	2204	100–150	Bleached	11½ cents or over 11 cents.
1	2206	100–150	Colored	13½ cents or over 12½ cents.
N610	2209	150–200	Bleached	13½ cents or over 12 cents.

The first, second, and third items contained 100–150 threads per inch, and if unfigured would have been dutiable at 35 per centum under paragraph 306. The fourth item contained 150–200 threads, and if unfigured would have been dutiable at 35 per centum under paragraph 307.

The collector classified the goods under paragraph 313 and liquidated the entry at 35 per cen-

tum ad valorem, as provided by paragraphs 306 and 307, plus the 2 cents additional specifically imposed by 313. The Government maintains the collector's action was correct. The purpose of 313 was to impose an additional burden on figured goods by adding 1 or 2 cents per yard to the duty, specific or ad valorem, prescribed by the applicable preceding part of the schedule, and in any reckoning consideration must necessarily be given to the ad valorem provisions and not only to specific rates.

Respondents admit the imports were properly classed under paragraph 313, but claim that the amount payable should be computed by adding 2 cents per square yard to the specific duties imposed by paragraphs 306 and 307 on plain cloth of the same weight, description, or condition—plain, colored, or bleached—and number of threads, and that the ad valorem rates specified in the provisos of those paragraphs are wholly inapplicable. This is based on the wording of 313—the argument being that ad valorem duties necessarily depend upon value, of which element no mention is made in the language which declares figured goods shall pay, "in addition to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard," etc.

The record does not disclose the weight of the imports. That, however, is immaterial, since the specific duties, in reckoning which alone weight

is considered, would in any event be less than the ad valorem according to the appraised values.

The Board of General Appraisers sustained the collector (R., pp. 14–19). The Circuit Court, adopting the construction advanced by the importers, reversed the Board (R., pp. 19–21), and the Circuit Court of Appeals affirmed the decree (R., pp. 23–27).

ARGUMENT.

I.

The history of tariff legislation and the connection in which it appears make the meaning of paragraph 313 sufficiently clear.

The provisions of paragraph 313 appeared *first* in the act of 1897. The countable clauses in the cotton schedule of that act follow the plan observed in all tariff laws since 1883, according to which cloth containing a specified number of threads and not exceeding a given value has been dutiable at specific rates, and when above such value at ad valorem rates. (Act 1883, 22 Stat., 505, 506; act 1890, 26 Stat., 591, par. 344–348; act 1894, 28 Stat., 527, par. 252–257.)

In *Hedden* v. *Robertson* (151 U. S., 520, 526) (Feb. 5, 1894) madras mull, a cloth of uniform groundwork upon which figures or patterns were woven contemporaneously with the fabric, was held dutiable under the countable provisions, act 1883, and not as a manufacture of cotton not otherwise specifically provided for. "The ornamentation

placed upon the groundwork of the fabric does not change its character as cotton cloth, subject to the countable clause of the statute." (*United States* v. *Albert*, 60 Fed., 1012.)

Paragraph 257, act of 1894, removed the doubt on this subject by providing: "The term 'cotton cloth' or 'cloth' wherever used in the foregoing paragraphs of this schedule shall be held to include all woven fabrics of cotton in the piece, whether figured, fancy, or plain, not specially provided for in this act, the warp and filling threads of which can be counted by unraveling or other practicable means." [Par. 310, act 1897, is substantially the same.]

The act of 1894 made figured cottons dutiable at either a specific or ad valorem rate, according to number of threads and value, under the paragraphs applicable to plain goods. And the same would be true of the 1897 act but for 313.

The well-known policy of the Dingley law was to lay highly protective duties and to increase the charge as articles became more expensive. This purpose is illustrated by the material advance in the rates of paragraph 308 over those of the corresponding one (256), act of 1894, and the introduction of the new paragraph (309) applicable only to the finest qualities.

Paragraph 313 was added in pursuance of the general design in order to lay a burden on imported figured goods "in addition to the duty herein (in this act) provided for other cotton cloth of the same description," etc. Ordinarily figured

goods are decidedly more expensive to manufacture than plain, and a higher rate on them harmonizes with the policy of the lawmakers.

When the tariff act of 1897 passed the House of Representatives paragraph 310 was identical with paragraph 313 as finally enacted, except the words "or condition" did not appear therein. The Senate struck out the word "description" and substituted "condition." The conference committee restored the word "description" and put in "or" before "condition."

In *Claflin* v. *United States* and *Mills* v. *United States* (109 Fed., 562, 564; affirmed 114 Fed., 257, 259,) paragraph 313, act of 1897, was construed to embrace figured cottons similar to those in question. In neither case was it denied that the goods were dutiable either at the specific rates or, if sufficiently valuable, at the ad valorem rates of the countable paragraphs. The importers contended that the figures were not produced in the way contemplated. This was overruled, and now another line of attack is being followed.

II.

The amount and character of the duty imposed is made sufficiently manifest by the language of paragraph 313; the use of the word "value" was unnecessary.

"The duty herein (in this act) provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch," referred to in paragraph 313, depends upon value

according to the plain provisions of the cotton schedule. It is impossible to apply the countable clauses without considering the element of value.

The countable paragraphs first prescribe specific duties and then, in provisos, ad valorem rates where prices exceed a given amount. Manifestly each one must be read and treated as a whole, the proviso being given weight along with the other part; and they must be construed as tho the first sentence declared that all described goods worth so much or less shall pay specific rates; if worth more, ad valorem. It is therefore absolutely necessary to know the value of any article before the amount of duty can be determined. This, of course, Congress appreciated, and having directed the use of a well-understood method, deemed it unnecessary specifically to point out that the thing essential to operating under it should be ascertained and utilized. Direction to do a thing includes the use of all necessary means. It would be senseless to say that one commanded to unlock a door could not use the key because the command did not contain the word key.

For many years prior to 1897 duties levied upon cottons were specific or ad valorem according to values, and the act of that year followed the old plan. No adequate reason appears for holding that paragraph 313 alone of all the cotton schedule requires something different. Its language does not necessitate this, and such construction would violate the spirit of the whole act.

The evident purpose of Congress was to impose an additional burden upon figured goods because of the great labor essential to their manufacture, in harmony with the policy pervading the entire cotton schedule which consistently prescribes higher rates as values increase thru fineness, bleaching, coloring, etc. The protective character of tariff laws and the policy of Congress to impose higher duties upon finer articles and to increase the same as additional processes enter into their manufacture have been frequently recognized. (*Arnold* v. *United States*, 147 U. S., 497, 498; *Tidewater Oil Co.* v. *United States*, 171 U. S., 219.)

Respondents rely upon *Bensusan* v. *Murphy* (10 Blatchf., 580; Fed. Cas., 1329). The statute there construed prescribed a specific duty per gallon upon wine, and in addition an ad valorem charge of twenty-five per cent, when imported in casks; if imported in bottles, "the same rate per gallon as wines imported in casks and an additional duty of 3 cents per bottle." The collector assessed the prescribed specific duty per gallon, ad valorem duty at 25 per centum, and 3 cents for each bottle. The court held "the same rate per gallon as wines imported in casks" referred only to the specific duty and that the ad valorem charge was unauthorized because "the latter can in no just sense be regarded as a rate per gallon." The opinion—by Shipman, district judge—I submit was erroneous. The court said, however, that Congress would have imposed both specific and ad

valorem duties "by simply in so many words subjecting wine in bottles to the same rates of duty as wine in casks." In the present case the language is, "shall pay in addition to the duty herein provided for other cotton cloth," etc., and this seems quite sufficient to meet Judge Shipman's views.

Because paragraph 313 makes 7 cents the dividing line between an additional charge of 1 or 2 cents shows no purpose to ignore the ad valorem rates of the countable paragraphs. It is entirely feasible to put all the provisions in operation. They were intended to, and do, harmonize. A valuation of over 7 cents is the lowest (par. 305) which necessitates an ad valorem assessment, and probably for that reason the same figure was inserted in 313 as the point of demarcation between the 1 and 2 cent specific tax.

III.

The construction of paragraph 313 advocated by respondents would subject high-priced figured cottons to less duty than cheaper plain goods—an absurd result which should be avoided.

Illustrative exhibits representing actual importations such as he frequently examined were presented by the Government agent to show that many figured cottons would be dutiable at a lower rate than similar cloth of plain weave, if respondents' contention prevails. (R., 10–11.)

Exhibit B, Nos. 1 and 2, represented plain and dotted cottons of the same general description.

(R., 11, 13.) The estimated duties thereon, according to the different constructions, follow:

Total amount of duty per meter upon #1 (plain weave) at 35%, under proviso to 306.	9.3 cents.
Total amount of duty per meter upon #2 (fancy cloth) if only the specific rates contended for by the importer were imposed, *i. e.*, 3 cents per yard plus 2 cents.	5.95 cents.
Total amount of duty per meter on #2 (fancy cloth) at 25% and 2 cents per square yard, as at present imposed by the Government.	16.81 cents.

The record does not disclose the weights of the imports in question, and therefore the actual amount of duty, if specific rates be applied, can not be determined, but they would certainly occasion smaller payment than the ad valorem ones.

Item No. 1561 (*ante*, p. 7), colored cloth containing 100 to 150 threads, valued at 14½ cents, requires application of paragraph 306, with specific rates for colored cloth from 3½ to 4½ cents per square yard, according to weight. Thirty-five per centum ad valorem upon valuation of 14½ cents is 5+ cents—one-half cent above the highest specific duty.

Item No. 1431 (*ante*, p. 7), bleached cotton with 100 to 150 threads, also requires application of paragraph 306, with specific rates for bleached

cloth from $2\frac{1}{2}$ to $3\frac{3}{4}$ cents. Thirty-five per centum ad valorem upon a valuation of $11\frac{3}{8}$ cents is $3\frac{97}{100}$ cents. [The other items would show like results.]

Upon figured cottons somewhat more valuable than the items in question the ad valorem duties alone—to which admittedly they would be subject but for paragraph 313—would be materially greater than the highest prescribed specific duty plus 2 cents. Respondents are contending for an interpretation which, instead of imposing additional duties upon figured goods, would bring about exactly the opposite result.

The following table, prepared by an expert in a large manufactory, further illustrates the matter:

> Comparison of duties on cotton cloth without extra figure and cotton cloth with extra figure as assessed by appraisers and also under decision of Circuit Court. Description: Dyed, 6 to 8 yards to pound, 100 to 150 threads to square inch (see paragraph 306 and 313).

Cost per square yard.	Without figure, duty 35 per cent.	With figure, appraisers' assessment, 35 per cent and 2 cents.	With figure, Circuit Court decision, duty 4¼ cents and 2 cents.
Cents.	*Cents.*	*Cents.*	*Cents.*
13	4.55	6.55	6¼
15	5.25	7.25	6¼
18	6.30	8.30	6¼
20	7	9	6¼
25	8.75	10.75	6¼
30	10.50	12.50	6¼
35	12.25	14.25	6¼
40	14	16	6¼

The table shows that the duty under Circuit Court decision on figured cloth is less than on plain cloth above 18 cents cost per square yard, and on goods costing 30 cents per square yard is only half what it should be as assessed by appraisers.

IV.

The countable provisions of the cotton schedule, referred to in paragraph 313, do not permit assessment of specific duties on goods exceeding in value the stated amounts. Unless that paragraph authorizes ad valorem rates on high-priced figured cottons they are dutiable at not more than 2 cents a yard.

The countable provisions clearly provide for specific duty *only* upon cloth not exceeding a certain value, and when the valuation is greater ad valorem duties *only* are imposed. There is, e. g., no provision of law authorizing a specific duty upon cotton containing 100–150 threads, valued at 14½ cents—Item No. 1561, *ante*, p. 7. To assess that item under paragraph 313, construing it according to respondents' contention, would necessitate application of the specific duty of paragraph 306 to an article so valuable as not to be subject to such duty at all.

Paragraph 306 authorizes an ad valorem duty *only*, when the value exceeds from 9 to 12½ cents according to condition. When there are 100–150 threads to the inch, paragraph 313 imposes the rate prescribed in paragraph 306, plus 2 cents, and nothing else. And where the number of threads is different the same is true of other paragraphs. Unless, therefore, the ad valorem provisions of the

countable clauses apply, 2 cents is the maximum which can be collected on any figured cotton cloth exceeding in value the figures at which specific duties stop, viz, 7 to 12½ cents. A result so preposterous plainly indicates the unsoundness of the construction which would occasion it. (*Bate R'f'g Co.* v. *Sulzberger*, 157 U. S., 1-37; *Knowlton* v. *Moore*, 178 U. S., 41–77.)

V.

The rule that duties should not be imposed upon vague or doubtful interpretations is inapplicable.

The Board of General Appraisers said (R., 17):

> It will be conceded that the aim of the law is to fix the duty in proportion to the amount of labor or cost of the commodity. Bearing that in mind it is hardly conceivable that Congress intended to enact paragraph 313, and by its application reduce the duty provided for in previous paragraphs of the act upon cotton cloths of a high value and grade, which would be the result if the importers' contention is correct. We think it perfectly reasonable that this additional duty should be imposed upon cloth "in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," whether the original duty be of an ad valorem or specific nature.
>
> It must be remembered that this is an additional duty, levied regardless of the method of levying the original duty, and is imposed upon any cotton cloth included in the dutiable list, providing for 1 cent per

> yard upon all cloth of the value of 7 cents or less, and 2 cents per yard if worth more than 7 cents. Hence we conclude that in order to give full effect to each paragraph of this schedule the additional duty may be imposed upon the goods either provided for in the bodies or the provisos of paragraphs 306 and 307.

Because the question involved seemed a doubtful one, the courts decreed in favor of the importers. The Circuit Court of Appeals, however, declared (R., 24):

> We have little doubt that it was the purpose of Congress, after cotton cloths had been properly classified under paragraphs 306 and 307, to lay an additional duty per square yard upon such cloth as was figured; in other words, to place an extra duty upon the figure, so that figured cotton cloth should pay a higher duty than the same cloth, plain.

The intention of Congress being clear, any ambiguity of language should have been resolved in harmony therewith. Little doubts do not justify conclusions nullifying the manifest purpose of the lawmakers. "The intent of the lawmaker is the law." (*Jones* v. *Guaranty and Indemnity Co.*, 101 U. S., 626.)

Where the intent is plain the law should be construed in harmony therewith. Every doubt or dispute is not to be resolved in favor of the importer. (*Newman* v. *Arthur*, 109 U. S., 132; *Heddon* v. *Robertson*, 151 U. S., 520.)

In *United States* v. *Wetherell* (65 Fed., 987, 990) the Circuit Court of Appeals of the First Circuit overruled the defense bottomed on the constantly advanced doctrine that "duties are never to be imposed upon vague or doubtful interpretations," and said in reference thereto:

> The rule has received no practical construction by the Supreme Court, so far as decisions of that court have been brought to our attention. The first case was *United States* v. *Isham* (17 Wall., 496), which related to the question whether a certain instrument was subject to a stamp duty or not; and altho the court stated generally the rule relied on by the present importer, it disposed of the case without coming to any application of it. The next was *Hartranft* v. *Wiegmann* (121 U. S., 609). This raised a question as between free and dutiable goods; but the court concluded that the decision of the Circuit Court was correct, and continued: "But, if the question were one of doubt, the doubt would be resolved in favor of the importer." The court did not go beyond the hypothesis, so that it had no occasion to apply the rule under consideration. In like manner, in the well-known case of *Twine Co.* v. *Worthington* (141 U. S., 468) the court, on page 474, said that the intention of Congress was plain. This, of course, was enough to end the litigation. *Earnshaw* v. *Cadwalader* (145 U. S., 247) turned on an issue for the jury. The court merely stated the ordinary rule

that the jury must be satisfied by a preponderance of evidence, and that the case was not within the earlier ones to which we have referred. *There can be no question as to the general proposition; yet, like all rules of construction of a similar character, we presume it has no practical use, except in cases of extraordinary doubt.* It has a more appropriate application when the question is one of any tax at all; *and the Federal reports are full of suits where the courts have not hesitated to perform the duty of determining mere questions of classification, where it was admitted some duty was to be imposed, in favor of the higher rate, under circumstances of great difficulty.*

I respectfully ask a reversal of the decree below.

J. C. McREYNOLDS,
Assistant Attorney-General.

OCTOBER, 1906.

O